

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**FRASER PETROLEUM SERVICES, INC. AND  
FRASER ENGINEERING COMPANY, INC.,  
a Single Employer**

**and**

**Cases 01-CA-150746  
01-CA-153888**

**LOCAL 537, PIPEFITTERS ASSOCIATION  
OF BOSTON, a/w UNITED ASSOCIATION  
OF JOURNEYMEN AND APPRENTICES  
OF THE PLUMBING AND PIPEFITTING  
INDUSTRY OF THE UNITED STATES  
AND CANADA**

**DECISION AND ORDER**

**Statement of the Cases**

On May 26, 2016, Fraser Petroleum Services, Inc. (Respondent FPS), Fraser Engineering Company, Inc. (Respondent FEC) (collectively, the Respondent), Local 537, Pipefitters Association of Boston, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (the Union), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

## **Findings of Fact**

### **1. The Respondent's businesses**

Respondent FPS is a Massachusetts corporation with an office and principal place of business at 65 Court Street, Newton, Massachusetts (the FPS Newton location), and it provides mechanical, maintenance, construction, and tank farm repair services for customers in the petroleum industry.

Annually, in conducting its operations, Respondent FPS derives gross revenues in excess of \$500,000 and purchases and receives at the FPS Newton location goods valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts.

At all material times, Respondent FPS has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent FEC is a Massachusetts corporation with an office and principal place of business at 65 Court Street, Newton, Massachusetts (the FEC Newton location), and it provides mechanical, plumbing, electrical, and HVAC services.

Annually, in conducting its operations, Respondent FEC derives gross revenues in excess of \$500,000 and purchases and receives at the FEC Newton location goods valued in excess of \$50,000 directly from points outside the Commonwealth of Massachusetts.

At all material times, Respondent FEC has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, Respondent FPS and Respondent FEC have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities (herein referred to as the Newton location); have provided services for each other; have interchanged personnel with each other; have had interrelated operations with common purchasing and sales, consolidated financial reporting, common insurance policies, and shared equipment; and have held themselves out to the public as a single integrated business enterprise.

Based on the operations described in the preceding paragraph, Respondent FPS and Respondent FEC constitute a single integrated business enterprise and a single employer within the meaning of the Act.

### **2. The labor organization involved**

The Union is a labor organization within the meaning of Section 2(5) of the Act.

## ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that the Respondent, Fraser Petroleum Services, Inc. (Respondent FPS) and Fraser Engineering Company, Inc. (Respondent FEC), as a single employer, Newton, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Maintaining the following provisions of its Employee Handbook (Handbook):

### Article VII, Work Conditions

#### L. Computer, Internet, and Internet Usage

##### 1. General

...

##### 2. Computer, Internet and E-mail Usage

...

The following behaviors are examples of previously stated or additional actions and activities that are prohibited and can result in disciplinary action:

...

- Sending anonymous email messages

### Article VIII, Conduct/Disciplinary Action

#### A. Employee Conduct and Work Rules

...

The following are examples of infractions of rules of conduct that may result in disciplinary action, up to and including termination of employment:

...

any absence without prior notice or proper explanation.

(b) Threatening employees with job loss if they select the Union as their collective-bargaining representative.

(c) Threatening employees with loss of work because they selected the Union as their collective-bargaining representative.

(d) Failing or refusing to bargain with the Union in the following appropriate unit before making any changes to employee wages, hours, benefits, or other working conditions:

All full-time and regular part-time pipefitters and welders, including apprentices, and foremen employed by Fraser Petroleum Services, Inc. at its Newton, Massachusetts facility but excluding all employees employed by Fraser Engineering Company, Inc., electricians, all other crafts, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

(e) No longer assigning Respondent FPS employees to Respondent FEC jobs, including Respondent FEC prevailing wage jobs, because of their Union support, and failing and refusing to bargain with the Union to agreement or good-faith impasse before changing the Respondent's practice of assigning Respondent FPS employees to Respondent FEC jobs, including prevailing wage jobs.

(f) Failing and refusing to bargain with the Union to agreement or good faith impasse before laying off Unit employees.

(g) Interfering with employee rights in any similar manner under Federal law.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Within 14 days of the Board's Order, rescind or revise the Handbook rules set forth in Paragraph 1(a) above.

(b) Make whole the following employees for the loss of pay and benefits they suffered by reason of the alleged discrimination against them, by payment to them of the amounts set forth opposite their respective names:

James Brogan, Jr.	\$18,636
William McHugh	\$12,567
Dennis Morse	\$25,268

(c) The Respondent has offered to recall James Brogan, Jr. and Dennis Morse to their former positions. Dennis Morse accepted the recall offer on or about May 12, 2016. James Brogan, Jr. declined the recall offer.

(d) Provide the Union with prior notice and an opportunity to bargain to agreement or good-faith impasse about any proposed changes to unit employees' wages, hours, benefits, or other working conditions.

(e) Reinstate the Respondent's practice of assigning Respondent FPS unit employees to Respondent FEC jobs, including Respondent FEC prevailing wage jobs, and continue that practice unless Respondent FPS bargains to agreement or good-faith impasse with the Union.

(f) Provide the Union with prior notice and an opportunity to bargain to agreement or good-faith impasse prior to laying off any unit employees.

(g) Within 14 days of service by the Region, post at its Newton, Massachusetts facility copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 9, 2016.

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, Member

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Lauren McFerran, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**

## **APPENDIX A**

### **NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government**

#### **PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS**

#### **FEDERAL LAW GIVES YOU THE RIGHT TO:**

Form, join, or assist a union;  
Choose a representative to bargain with us on your behalf;  
Act together with other employees for your benefit and protection;  
Choose not to engage in any of these protected activities.

**WE WILL NOT** do anything to prevent you from exercising the above rights.

**WE WILL NOT** maintain or enforce Handbook rules which prevent you from sending anonymous email messages and which provide for disciplinary action, up to and including termination of employment, for any absence without prior notice or proper explanation.

**WE WILL NOT** threaten employees with job loss if they select the Union as their collective-bargaining representative.

**WE WILL NOT** threaten employees with loss of work because they selected the Union as their collective-bargaining representative.

**WE WILL NOT** fail or refuse to bargain with the Union in the following appropriate unit before making any changes to employee wages, hours, benefits, or other working conditions:

All full-time and regular part-time pipefitters and welders, including apprentices, and foremen employed by Fraser Petroleum Services, Inc. at its Newton, Massachusetts facility but excluding all employees employed by Fraser Engineering Company, Inc., electricians, all other crafts, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

**WE WILL NOT** stop assigning Fraser Petroleum Services, Inc. employees to Fraser Engineering Company, Inc. jobs, including Fraser Engineering Company, Inc. prevailing wage jobs, because of their Union support, and **WE WILL NOT** fail and refuse to bargain with the Union to agreement or good-faith impasse before changing our practice

of assigning Fraser Petroleum Services, Inc. employees to Fraser Engineering Company, Inc. jobs, including Fraser Engineering Company, Inc. prevailing wage jobs.

**WE WILL NOT** fail or refuse to bargain with the Union to agreement or good-faith impasse before laying off unit employees.

**WE WILL NOT** in any similar manner interfere with your rights under Section 7 of the Act.

**WE WILL** revise or rescind Handbook rules which prevent you from sending anonymous email messages and which provide for disciplinary action, up to and including termination of employment, for any absence without prior notice or proper explanation.

**WE WILL** pay James Brogan, Jr. for the wages and other benefits he lost because we stopped assigning him to Fraser Engineering Company, Inc. jobs, including Fraser Engineering Company, Inc. prevailing wage jobs, and because we laid him off.

**WE WILL** pay William McHugh for the wages and other benefits he lost because we stopped assigning him to Fraser Engineering Company, Inc. jobs, including Fraser Engineering Company, Inc. prevailing wage jobs.

**WE WILL** pay Dennis Morse for the wages and other benefits he lost because we laid him off.

**WE HAVE** offered to recall James Brogan, Jr. and Dennis Morse to their former positions. Dennis Morse accepted our recall offer on or about May 12, 2015. James Brogan, Jr. declined our recall offer.

**WE WILL** provide the Union with prior notice and an opportunity to bargain about any proposed changes to unit employees' wages, hours, benefits, or other working conditions.

**WE WILL** reinstate our practice of assigning Fraser Petroleum Services, Inc. employees to Fraser Engineering Company, Inc. jobs, including Fraser Engineering Company, Inc. prevailing wage jobs, and **WE WILL** continue that practice unless we bargain to agreement or good-faith impasse with the Union.

**WE WILL** provide the Union notice and an opportunity to bargain to agreement or good-faith impasse before laying off any unit employees.

**FRASER PETROLEUM SERVICES, INC. AND  
FRASER ENGINEERING COMPANY, INC.,  
A Single Employer**

The Board's decision can be found at [www.nlr.gov/case/01-CA-150746](http://www.nlr.gov/case/01-CA-150746) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

